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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 MAURICE GODOY,

8 Plaintiff,

9 v.

10 EDMUND GERRY BROWN, et al.,

11 Defendants.

Case No. [18-cv-06650-HSG](#)

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13 **ORDER SUA SPONTE GRANTING
14 EXTENSION OF TIME TO FILE
15 SECOND AMENDED COMPLAINT**

16 Plaintiff, an inmate at Chuckawalla Valley State Prison, filed this *pro se* civil rights action
17 pursuant to 42 U.S.C. § 1983. For the reasons set forth below, the Court will *sua sponte* grant
18 plaintiff an extension of time to February 14, 2020 to file a second amended complaint.

19 **DISCUSSION**

20 On November 26, 2019, the Court dismissed plaintiff's amended complaint with leave to
21 amend, noting that the amended complaint suffered from the same deficiencies as the initial
22 complaint. Dkt. No. 28. Plaintiff was ordered to file a second amended complaint by December
23 24, 2019, that addressed the identified deficiencies, or this action would be dismissed. Dkt. No.
24 28 at 6. The deadline has passed and plaintiff has not filed a second amended complaint. Plaintiff
25 did, however, file a notice of appeal ("NOA") with the Ninth Circuit Court of Appeals, appealing
26 the Court's November 26, 2019 Order.¹ Dkt. No. 30. The NOA does not stay the Court's
27 deadlines. If plaintiff wishes to proceed with this action, he must file a complaint that states
28 cognizable claims. The Court will *sua sponte* grant plaintiff an extension of time to February 14,
2020 to file a second amended complaint that addresses the deficiencies identified in the Court's

¹ An order of dismissal with leave to amend is not an appealable decision. *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997).

1 November 26, 2019 Order. **Failure to file a proper second amended complaint in the time**
2 **provided will result in the dismissal of this action without further notice to plaintiff.** If using
3 the court form complaint, plaintiff must answer all the questions on the form in order for the
4 action to proceed. Plaintiff is reminded that an amended complaint completely replaces the
5 previous complaints, *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), and that he may
6 not incorporate material from the prior complaints by reference. Plaintiff also may not change the
7 nature of this suit by alleging new, unrelated claims in the second amended complaint. The Clerk
8 shall include two copies of a blank complaint form with a copy of this order to plaintiff.

9 **CONCLUSION**

10 For the reasons set forth above, the Court *sua sponte* grants plaintiff an extension of time
11 to February 14, 2020 to file a second amended complaint. **Failure to file a proper second**
12 **amended complaint in the time provided will result in the dismissal of this action without**
13 **further notice to plaintiff.** The Clerk shall include two copies of a blank complaint form with a
14 copy of this order to plaintiff.

15 **IT IS SO ORDERED.**

16 Dated: 1/13/2020

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18 HAYWOOD S. GILLIAM, JR.
United States District Judge

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